

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 125 OF 2018S

STATE
Vs
APETE CAMAIBAU

Counsels : Ms. S. Sharma for State
Ms. V. Narara for Accused
Hearings : 11, 14 and 15 October, 2019.
Summing Up : 16 October, 2019.
Judgment: 16 October, 2019.

JUDGMENT

1. The three assessors had returned with a unanimous opinion finding the accused not guilty as charged on count no. 1.
2. Obviously, the three assessors had not accepted the prosecution's version of events.
3. I had reviewed the evidence called in the trial and had directed myself in accordance with the summing up I gave the assessors today.

4. Assessors are there to assist the trial judge decide whether or not the accused was guilty as charged.
5. I agree entirely with the three assessors' unanimous not guilty opinion. I accept the complainant's evidence that she was raped on 22.3.18 at Vatuwaqa, when a man put his fingers into her vagina without her consent and he knew she was not consenting.
6. However, in my view, her identification evidence of the accused was of a weak quality. It was made with weak lighting from a nearby house, when it was dark at the time, being after 3.20 am in the early morning on 22.3.18. The weak lighting and the darkness affected her ability to clearly identify the person's face, at the material time. As with crime happening at night, clear lighting is absolutely essential for an identification evidence to be accepted. In this case, that was not possible. Therefore, there were a lot of doubts in the prosecution's case as to the identity of the alleged rapist.
7. The test in **R v Turnbull** had not been satisfied beyond a reasonable doubt. Lighting was a big problem. In calculating the time of observation, no clock or watch was referred to. In fact, PW1 said she was guessing the same. No other evidence was brought in to support the weak identification evidence.
8. Given the above, I agree with the three assessors. On count no. 1, I find the accused not guilty as charged and acquit him accordingly.
9. Assessors thanked and released.



Solicitor for the State
Solicitor for the Accused

: **Office of the Director of Public Prosecution, Suva.**
: **Legal Aid Commission, Suva.**



Salesi Temo
JUDGE